

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA

FILED

AUG 06 2019

U.S. DISTRICT COURT-WVND
WHEELING, WV 26003

CHARLES DENNIS POLING,

Plaintiff,

v.

CIVIL ACTION NO.: 5:19-cv-238
19-C-175

Stamp

WISE SERVICES, INC.; ZURICH
AMERICAN INSURANCE CO. and
GALLAGHER BASSETT SERVICES,

Defendants.

NOTICE OF REMOVAL

TO THE HONORABLE JUDGES IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA:

Defendants, Wise Services, Inc. Zurich American Insurance Co. and Gallagher Bassett Services, by and through their attorneys, Rawle & Henderson, LLP, respectfully avers as follows:

1. On or about July 23, 2019, Plaintiff commenced a civil action against Defendants in the Circuit Court of Ohio County, West Virginia. *See Plaintiff's Summons and Complaint* attached as Exhibit "A."
2. According to the *Complaint*, this lawsuit arises out of a motor vehicle accident, which allegedly occurred on August 5, 2017 in Ohio County, West Virginia. See Exhibit "A."
3. The Summons and *Complaint*, being the original process in this case, was first received, by Defendants no earlier than July 29, 2019. Thus, this Notice of Removal is filed within the time provided by 28 U.S.C. §1446(b).

4. At all times material hereto, defendant, Wise Services, Inc., was and is a corporation incorporated under the laws of the State of Wyoming with its principal place of business located in Wyoming.

5. At all times material hereto, defendant, Zurich American Insurance Co. was and is a corporation incorporated under the laws of the State of New York with its principal place of business located in New York.

6. At all times material hereto, defendant, Gallagher Bassett Services was and is a corporation incorporated under the laws of the State of Illinois with its principal place of business located in Illinois.

7. At all times material hereto, plaintiff, Charles Dennis Poling, was and is a citizen of the State of West Virginia, residing in Ohio County, West Virginia. *See* Exhibit “A.”

8. In the *Complaint*, Plaintiff claims, *inter alia*, that as a result of the accident at issue herein, Plaintiff, Charles Dennis Poling, “suffered stabbing back pain, pain in his right shoulder,” which required medical attention and physical therapy and caused him a lack of sleep. Plaintiff further states in his *Complaint*, that the results of an MRI deemed it necessary for him to undergo surgery. Plaintiff has not undergone the recommended surgery due to costs. *See* Exhibit “A.”

9. Based upon a fair reading of the *Complaint*, plaintiff is seeking the costs for future surgeries, physical therapy and follow up care following said surgeries – which amount has not been determined – and \$16,402.00 for medical bills that have been incurred to date. *See* Exhibit “A.” The *Complaint* also requests compensation for his “injuries, losses and damages including pain and suffering, as herein alleged, costs of suit and any further relief which this Honorable Court finds fair and just.” *See* Exhibit “A.” While not definitively set forth, it appears clear – or at the

very least, plausible – that Plaintiff is also seeking damages related to claims of bad faith. Based upon this, it is clear that the amount in controversy exceeds the jurisdictional threshold.

10. Diversity of citizenship within the meaning of 28 U.S.C. §1332, exists between plaintiff and defendants since:

- (a) Plaintiff is a citizen and resident of the State of West Virginia; and
- (b) Defendants are not citizens or residents of the State of West Virginia.

11. Furthermore, diversity of citizenship existed at the time the action sought to be removed was commenced and continues through the time of the filing of this notice, such that Defendants are entitled to removal pursuant to 28 U.S.C. §1441 as amended, and 28 U.S.C. §1446.

12. The undersigned was retained as defense counsel for defendants and they consent to this removal.

WHEREFORE, defendants, Wise Services, Inc.; Zurich American Insurance Co.; and Gallagher Bassett Services, pray that the above-captioned action now pending in the Circuit Court of Ohio County, West Virginia, be removed therefrom to This Honorable Court.

Dated: August 6, 2019

Respectfully Submitted,

RAWLE & HENDERSON, LLP

By: 

Edward J. Chiodo, Esq. (WVSB #7262)
Matthew G. Chapman, Esq. (WVSB #11440)
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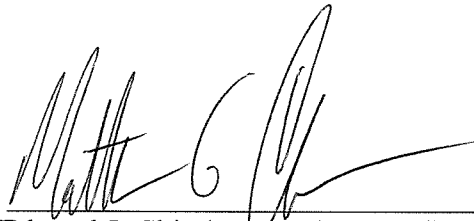
WISE SERVICES, INC.; ZURICH
AMERICAN INSURANCE CO. and
GALLAGHER BASSETT SERVICES,

Defendants.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Notice of Removal was served upon the below this 6th day of August, 2019, by certified mail, return receipt requested:

Charles Dennis Poling
51 Maryland Street
Wheeling, WV 26003



Edward J. Chiodo, Esq. (WVSB #7262)
Matthew G. Chapman, Esq. (WVSB #11440)

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